



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Consolidated Marketing Network, Inc.

File: B-224458

Date: October 10, 1986

DIGEST

1. Protest that a Department of Labor wage determination included in a solicitation for a service contract omitted wage rates for several classes of required employees is denied since the administrative procedure for determining wages for omitted classes of prospective employees in the solicitation provided a reasonable and common basis for preparation of bids.

2. Protest that bidder was prejudiced by agency's failure to provide quantities of hazardous wastes to be collected and disposed of under the contract or to respond to protester's complaint about the question before bid opening is without merit, since the solicitation for solid waste collection and disposal services did not include handling of hazardous wastes and was not ambiguous in this respect.

DECISION

Consolidated Marketing Network, Inc., protests any award of a contract under invitation for bids (IFB) No. N62474-86-B-4840, issued by the Naval Air Facility, El Centro, California. The IFB was for grounds maintenance services, solid waste collection and disposal services, and custodial services. Consolidated, the incumbent contractor, contends that the Department of Labor (DOL) wage determination provided with the solicitation omitted several classes of workers expected to be used in the performance of the work, and that the IFB required the removal of hazardous wastes but failed to specify their "nature or quantity." These defects, the protester alleges, prevented competition on a common basis.

We deny the protest.

Consolidated initially reported to the agency 10 days before bid opening that the solicitation improperly omitted Service Contract Act wage determinations by the Department of the Labor for eight labor classes.

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Consolidated also complained that the IFB required disposal of hazardous wastes but did not indicate what quantities of such materials might be expected. Shortly after bid opening, which occurred on June 30, the contracting officer responded to Consolidated, stating that the IFB provided instructions for classification of employees not listed on the wage determination, and that the IFB did not include disposal of hazardous wastes except for those that might be generated by the contractor during performance. On July 10, Consolidated filed its protest with our Office, stating that its bid had not been low because of alleged deficiencies in the solicitation.

Wage Determination

The Service Contract Act requires federal contractors to pay minimum wages and fringe benefits as determined by the Secretary of Labor to employees under service contracts exceeding \$2,500. 41 U.S.C. §§ 351-358 (1982). Department of Labor regulations require agencies to provide notification of their intentions to enter a service contract and to list the classes of employees expected to be employed under the contract. 29 C.F.R. § 4.4 (1985). The Navy did so in this case, listing 11 classes of prospective employees. The Department of Labor's wage determination, however, did not include all of the listed employee classes. The protester argues that without a wage determination for all classes of expected employees, the bidders could not compete on a common basis.

The IFB incorporated a clause required by Department of Labor regulations to be included in contracts subject to the Service Contract Act. 29 C.F.R. § 4. That provision, Clause I9 of the IFB, provides standards for the contractor to establish wage and fringe benefit rates for any classes of employees omitted from the wage determination in the IFB. The contractor must take into account the knowledge and skill levels of workers not covered by the wage determination, compare them with the knowledge and skill levels of covered workers, and establish conforming wages. The contractor must report its actions in this regard to the contracting officer, who in turn reports to the Department of Labor for its final determination.

We find that the Navy complied with its obligation to obtain a wage determination for inclusion in the IFB, see Consolidated Marketing Network, Inc., B-219387, Sept. 3, 1985, 85-2 CPD ¶ 262, and we believe that the procedures set

forth in the IFB for contractors to establish wage and fringe benefits for omitted classes of employees provided a reasonable basis for bidders to estimate their labor costs and to compete on an equal basis. See A & C Building and Industrial Maintenance Corp., B-196829, Mar. 31, 1980, 80-1 CPD ¶ 238.

The protester refers to a decision by the Armed Services Board of Contract Appeals (ASBCA), which, according to Consolidated, establishes that the wage determination in this case is "defective." Sylvan Service Corporation, ASBCA No. 31121, Jan. 22, 1986, reprinted in 86-2 BCA ¶ 18,780 (CCH 1986). That case concerned a claim for increased costs incurred because the contractor was required to pay certain fringe benefits under the Service Contract Act. The wage determination in the solicitation had described the fringe benefits in footnotes, but omitted the references to the footnotes in the text. The Board held that although the determination was defective, the contractor had many prior government contracts with wage determinations and should have known that fringe benefits were required as described in the footnotes. Unlike Sylvan Service, this protest does not involve an alleged inconsistency between Service Contract Act obligations and a bidder's expectations based upon the solicitation. Rather, we must decide whether the bidders here were provided sufficient information regarding their Service Contract Act obligations so that they could prepare bids on a common basis. As discussed above, we believe that this was the case, and deny this ground for protest.

Hazardous Wastes

Consolidated contends that the IFB states that removal of hazardous wastes will be required, and that, if this was not intended by the Navy, the agency should have clarified the IFB before bid opening in response to Consolidated's initial protest.

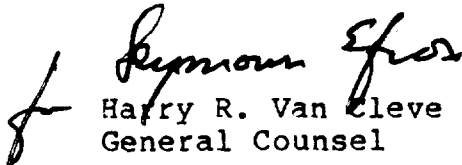
The protester points to several provisions of the solicitation in support of its argument. The IFB incorporated by reference the "Hazardous Material Identification and Material Safety Data" clause, which must be inserted in contracts that will involve exposure to hazardous materials. Federal Acquisition Regulation (FAR), 48 C.F.R. § 52.223-3 (1985). The IFB also provided that "debris, rubbish, hazardous waste and nonusable material resulting from work under [the] contract" must be disposed of at the contractor's expense and in accord with certain restrictions. We believe that the presence of these two provisions could lead prospective bidders to examine carefully the statement of work to ascertain if

any hazardous wastes must be collected and disposed of by the contractor.

The schedule for "Solid Waste Collection and Disposal Services" states that the contractor must collect, store, treat, and finally dispose of "garbage, refuse and other discarded solid wastes." The IFB definitions of "garbage," "refuse," and "solid waste" do not mention hazardous waste, which is defined separately. We have examined the entire solicitation, including all descriptions of the solid waste collection and disposal requirements and conditions, and find no other explicit or implicit reference to hazardous waste. We conclude that hazardous wastes are not encompassed within the contractor's responsibilities.

Consolidated questions why, if the Navy did not intend for the contractor to dispose of hazardous wastes, the agency delayed responding to Consolidated's inquiry about hazardous wastes for 2 weeks, until 3 days after bid opening. The record does not indicate the reasons for the timing of the agency's reply. We do not find that the IFB was ambiguous because of the absence of any responsibility for hazardous wastes and, therefore, we are aware of no legal requirement for the Navy to clarify the solicitation language.

We deny the protest.


Harry R. Van Cleve
General Counsel